

# Financing Card Based on *Murabahah* Contract: The Legal Implications on a Credit Card

Rahmadi Indra Tektona

Doctoral Program of Law, Law Faculty, Brawijaya University, Indonesia

Promotor : Prof. Tohir Luth

Co Promotor : Prof. Rahmad Budiono and Dr. Sihabudin

**Abstract**— *The development in the economic sector is influencing the development of banking products. One of the many products that is commonly used is credit card. In this context, The use of credit cards practically bring some problems that are reflected in the Islamic Law Perspective, especially because it does not specifically manage the credit cards according to Islam. It is different from the conventional credit cards that already have legal instruments clearly. Therefore, this study examines the legal implications in financing cards based on murabahah contract. This research is a normative legal research by analyzing the management of the Financing Card Based on Murabahah Contract. In order to help the analyses, this study uses the theory of Maqasid al-syari'ah and the theory of expediency (utility). The results that found related to the legal implications in financing cards based on murabahah contract can be reviewed from the relevancy to the theory of usefulness (utility). Credit cards as a modern means of payment, provide many conveniences and benefits in the midst of the rapid development of the business world. In addition, to address the use of credit cards based on usury, the Syariah Bank issued a Syariah Credit Card or Financing Card, this product must be based on the National Syariah Council Decision (Fatwa Majelis Ulama Indonesia) No.54 / DSN-MUI / 2006 on Syariah Card. Then in order to avoid legal implications that are not in accordance with syariah principles, from the aspect of the term that is used in Syariah, it is more appropriate to use the financing card term instead of credit card.*

**Keywords**— *Syariah Credit Card, Murabahah Contract, Islamic Law.*

## I. INTRODUCTION

### 1.1 Background

Nowadays, globalization that is happened in all over the world including Indonesia touches various life aspects. For instance, the field of socio-economic even influences the consumer consumptive behavior in buying electronic, clothing, and so on. The globalization also makes a life become more modern and more practical, so

it encourages the world to make an easier way of financing transaction.<sup>1</sup>

In the modern world, there are many products that make up the economy, for example, saving, credit, mortgage, and so forth. One of the financial products that is used more often is a credit card. A credit card is a part of economic activity that is often used by modern society as a tool to replace cash as a payment for goods, money, or service that they purchase in a place where provides payment with credit card.<sup>2</sup>

Credit card has a greater advantage and wider scope that can be used from a small transaction to a big transaction. This condition is very useful for society, especially for them who often travel for business or tourism and other activities because credit card can be used in various countries which accept payment with credit cards, where the merchant cooperated with the seller or service provider.

Right now, in Indonesia there are 24 companies that publish credit cards as follows:<sup>3</sup>

Picture.1: List of Credit Card Issuers

No.	CREDIT CARD	No.	CREDIT CARD
1	BANK OF	13	BANK OF OCBC NISP
2	BANK OF	14	BANK OF PERMATA
3	BANK OF CIMB	15	BANK QNB
4	BANK OF	16	BRI (PERSERO)
5	BANK OF DBS	17	BANK OF SINARMAS
6	BANK HSBC	18	BANK OF UOB
7	BANK OF MNC	19	BNI SYARIAH
8	BANK OF ICBC	20	CITIBANK
9	BANK OF	21	PAN INDONESIA
10	BANK OF	22	PT. AEON CREDIT

<sup>1</sup>Fitri Anis Wardani. *The Credit Card from Islamic Perspective*. The Economic Journal of Syria IQTISHODIYO, Vol. 1, No. 2, September 2016, p. 33

<sup>2</sup>Subagyo. *Bank and Others Finance Institution*. (Yogyakarta: The Issuer of the Senior Secretary of Economics YKPN, 2005), p. 39.

<sup>3</sup><https://www.bi.go.id/id/statistics/system-payment/apmk/Contents/Plisers%20APMK.aspx>, accessed on April 4, 2018.

11	BANK OF MEGA	23	PT. SHINHAN INDO
12	BNI	24	STANDARD

According to the above data, nowadays there are many forms of credit cards that run all over the world not only locally but also run internationally.<sup>4</sup> Credit cards are generally used by medium to high class society, although some of them are unfit to that class yet. This can be proven by the number of credit cards issued in 2017 which is 17,244.127, while in February 2018 is 17.438.938.<sup>5</sup> Related to the total credit card transactions, the use of expenditure in 2015 reached 274,719,267 transactions with nominal of 273,141,967 million rupiah, in 2016 and 2017 as much as 297,661,974 transactions with nominal of 272,950,052 million rupiah.<sup>6</sup>

Even though credit card is quite diminishing, there are some negative impacts arising from the use of credit card, such as:

1. It cause modus operandi to various crime that uses credit cards as a media, not only in conventional transaction mode but also on the virtual level transaction, and society become more consumptive and feel that they can always afford what they want.<sup>7</sup>
2. If a credit card holder does not pay the credit bill, then it will be difficult to ask for the payment because in the credit card issue contract, assurance is not necessary like in the general credit contract. The value of the assurance to issue a credit card is only with a declaration of salary.<sup>8</sup>
3. A credit card holder tends to be wasteful in their money, because they not feel spending their money in real (cash), therefore, they buy something that is not necessary needed.<sup>9</sup>
4. The high interest rates, so it is burden some credit card holders in paying off their credit card bills.

Even though there are some negative impacts of credit cards, in this case credit cards also have positive effect, namely:

1. Provide a sense of security, increase confidence, prestige, feel modern, practical, and feel safe while making payments<sup>10</sup>
2. A credit card holder feels more practical and easier in transacting or shopping using cards, so there is no need to bring cash to eliminate the risk of loss and theft.<sup>11</sup>
3. Facilitate customers to get cash every 24 hours in various strategic places, making it easier to meet the needs of cash abruptly<sup>12</sup>

The fact that credit card grows very fast in offering the easiest way for financial transaction, encourages a number of Islamic financial institution and Islamic Bank to participate in issuing the Islamic credit card.<sup>13</sup> Bernhard Bank in Malaysia is the first pioneer in the world that publishing Al Tasliff in 1996. Middle East Country has the biggest number of credit card holders, Islamic credit card (syariah credit card) in the last five years from its beginning has grown until 26% with 34, 7 million US dollars transaction. In Saudi Arabia grows even more until 40%.<sup>14</sup>

The growing of Islamic credit card in the Middle East and Malaysia has triggered Indonesia's financial institution to participate in issuing Islamic credit card. In 2007, the first Islamic credit card in Indonesia published by Danamon Bank and called as Dirham Card, then followed by BNI Syariah Bank in 2009 with Hasanah Card. These two Islamic credit cards in Indonesia are collaborated with Mastercard International.<sup>15</sup>

As mentioned before as an Islamic credit card, academicians and practitioners use some terms such as Credit card based on Syariah, Syariah Credit Card, Islamic Card Credit, Credit Card with Syariah principle, and Syariah Card<sup>16</sup>, and also financing card based on the

<sup>4</sup>Abdul Wahab Ibrahim Abu Sulaiman. *Syariah Credit Card*. (Jakarta: PT. Raja Jaya Grafindo, 2006), p. 45.

<sup>5</sup><https://www.bi.go.id/id/statistik/sistem-pembayaran/apmk/contents/jumlah%20apmk%20beredar.aspx> accessed on April 4, 2018

<sup>6</sup><https://www.bi.go.id/id/statistik/sistem-pembayaran/apmk/contents/transaksi.aspx> accessed on April 4, 2018

<sup>7</sup>Ahmad Fadlan Lubis and Irsad Lubis. *The Analysis of Muslim Credit Card Users In Medan City*. Journal of Economics and Volition, Vol. 1, No.1, December 2012, p. 23.

<sup>8</sup>Karsmir. Betty and the New Year. (Rearranged Press, 2001), p. 309-310. (hereinafter referred to as Cashmere I)

<sup>9</sup>*Ibid*

<sup>10</sup>Ahmad Fadlan Lubis and Irsad Lubis. *Op.Cit.*

<sup>11</sup>Kasmir (I). *Op. Cit.*, hlm. 308-309.

<sup>12</sup>*Ibid*

<sup>13</sup>Arif Pujiyono. *Islamic Credit Card* (A study of Contemporary Islamic Payment System). The Journal of the Dynamic of Development. Vol. 2 No. 1, June 2005, p. 70.

<sup>14</sup>Muhammad Synfi' Antonio. Fund. Islamic Magazine. Edition no. 8, June 2003, p. 9. (hereinafter referred to as Muhammad Synfi' Antonio II)

<sup>15</sup>*Islamic Credit Cards Vs Conventional Credit Card*, p. 3. Accessed through <http://eprints.unisbank.ac.id/163/1/r...rticles5.pdf>, Accessed on 27th of July 2012 2018.

<sup>16</sup>Hengki Firmanda. *Syari'ah Card (Syariah Credit Card) based on Utility and Maslaha Principles*. Journal of Law Sciences Vol. 4 No. 2, February-July 2014, p. 258.

Syariah Principles which can be found in the book of Abdul Ghofur Anshori.<sup>17</sup>

One of the definition of Syariah Credit Card is that a provider with payment facility from the Bank that can be used by the card holder (*hamil al-bithaqah*) as a media to pay or to get some cash in some spesific places and finally should be paid off by the card holder to the provider (*mushdir al-bithaqah*) at the time as determined earlier in the contract.<sup>18</sup>

According to the Syariah Banking Regulation, the syariah principle is one of the principles as mentioned in Islamic law for the banking activities as declared by the Islamic Institution which has an authority in making rules in religious matter.<sup>19</sup> Then, syariah principle can also be defined as a regulation mentioned in a contract based on Islamic Law between the Bank and other party to save some trade financing fund or other activity which are according to syariah principle, for example *mudharabah* or a financing based on the principle of profit sharing, *murabahah* or the principle of sale and purchase of goods by obtaining profit, *musyarakah* or a financing based on the principle of equity participation, *ijarah* or a financing of capital goods based on the principle of pure lease without option, or with the option of transferring ownership of leased goods from the bank by other parties or can be called as *ijarah wa iqtima*.<sup>20</sup>

According to a research by Karim Business Consulting (*will be called as KBC*) in Muhammad Syafi'i Antonio's book, says that the migration tendency the using of conventional credit card to the syariah credit card is very significant in the 26,1% average number or can be concluded that there will be a potential market of 987,9 thousand persons. Moreover, the research from KBC mentioned that the growth of that assumption will be better through the grow of syariah banking in 47 % each year.<sup>21</sup>

The KBC Researcher's finding as mentioned above shown that there is a great potential in this credit card product. The need for an efficient and effective method of making payment for Islam Community is an

urgent need in a globalization and huge growing information. However, to run this concept will not be easy. Basically, the credit card whether conventional or syariah is a system to make payment transaction easier and not depend on cash to bring money which sometimes put at a risk.<sup>22</sup> According to that, the credit card presents to meet the needs of the community toward *less cash society*.

## 1.2 Research Problems

With the increasing number of credit card holder, It lead to some problems if we analyze from *fiqh* Islam perspective. One of the problem is that many people involved in the credit card transaction, therefore *fuqaha*<sup>23</sup> is having difficulty in determining the type and deciding how many contract (*akad*) should be made.<sup>24</sup>

In addition, in fact there is no specific regulation for the Syariah credit credits. Vise versa, conventional credit card has been regulated in Minister of Finance Decision Number 1251 / KMK.013 / 1988 on the Arrangement and Procedure of Financing Institution, Indonesian Bank Regulation Number. 10/8 / PBI / 2008 on the Implementation of the Use of Credit Card for Financial Transaction, the Minister of Finance Regulations Number. 84 / PMK. 012/2006 On the Financing Companies, the Proceeds of the Indonesian Bank Regulation Number 14/2 / PBI / 2012 on the Alteration of Indonesian Bank Regulation Number 11/11 / PBI 2009 on the Activity of Credit Card as a payment Media, All of those regulations have provided specific legal regulation about the conventional credit cards.

From *syara'* law perspective, the product of credit cards is defined in the Islamic Regulation (Fatwa) Number DSN-MUI No.54 / DSN-MUI / 2006 on Syariah Card, has been declared as the product of the Islamic Payment Media. This declaration by DSN is still being debatable, especially because there is no specific *syara'* regulation on the Islamic credit cards.<sup>25</sup> It should be noted that in the Indonesian law, the DSN-MUI regulation is not a part of Indonesian legal regulations, but only as a recommendation for financing operational sector. So, it is

<sup>17</sup>Abdul Ghofur Anshori. *The Formation of Syari'ah Bank Through the Acquisition and Conversion (Froom Positive and Islamic Law Perspective)*. (Yogyakarta: UII Press, 2010), p. 20.

<sup>18</sup>Ulul Azmi Mustofa. *Syariah Card from Al-Maqasid Syariah Perspective*. Scientific Journal of Islamic Economy. Vol. 01, No. 01, Maret 2015, p. 19.

<sup>19</sup>Look at Article 1 point 12 in the Acts Number 21 Year 2008 on Syariah Banking.

<sup>20</sup>Zainuddin Ali. *Syariah Banking Law*. (Jakarta: Sinar Grafika, 2008), p. 3. (hereinafter referred to Zainuddin Ali)

<sup>21</sup>Muhammad Syafi'i Antonio (I). *Op. Cit.*, p 11.

<sup>22</sup>[http://www.haryobayu.web.id/?aksi=detail\\_blog&nomor=671](http://www.haryobayu.web.id/?aksi=detail_blog&nomor=671), Setiawan Budi Utomo. *The Law of Conventional and Syariah Credit Card Based on Islam*. Accessed on 27th January 2018.

<sup>23</sup>Fuqaha is the Fiqh (Islamic Law) expert. According to Fuqaha, Fiqh is syara law which according to Quran and Hadits from Prophet Muhammad SAW that concluded by doing *ijtihad* and *istibath* based on research. Look at Teungku Muhammad Hasbi As-Shiddieqy. *Islamic Fiqh Law*. (Semarang: PT Pustaka Rizki Putra, 1997), p. 1.

<sup>24</sup>Fitri Anis Wardani. *Op. Cit.*, p. 38.

<sup>25</sup>Arif Pujiyono. *Loc. Cit.*

necessary to be answered what is the legal implications of financing card based on the *Murabahah* contract?

### 1.3 The Theoretical and Conceptual Framework

#### 1.3.1 The Maqashid Syariah Theory (The Purpose of Islamic Law)

It is an important concept and fundamentals of *maqasid at-tasyri* 'or *maqasid al-syari'ah* which said that in Islamic law it is advice to manifest and maintain *mashlahat* for humanity. This concept has been acknowledged by the people of the world and they mention it as:

"Where there is benefit, there will be Allah SWT rules."<sup>26</sup>

*Mashlahah* in Arabic language (*mashalih as the plural form*) is a synonym of "benefit". According to Al-Khawarizmi in Al-Syaukani, *maslahah* is taking care of Islamic Law purpose by preventing disaster or corruptness that is hesitancy from human.<sup>27</sup> Related to that, every rules to keep the five *syara'* purposes and preventing from the destruction or endanger called as *mashlahah*. Based on that definition, we can conclude that the barometer of *maslahah* is Islamic Law, not intelligence. Al-Ghozali explains that the origin of *maslahah* is something that brings benefit or advantage and keeping from *mudharat* (destruction) which basically keeping the purposes of *syara* in deciding law.<sup>28</sup>

The *Maslahah* theory is derived from the theory of Islamic law which orientation is more emphasis on the element of human welfare than to question the problems that are normative. This theory does not merely see the written text of the law but rather emphasizes the principle or goal to be achieved, contained in the *nash* or texts.

One of the most important and fundamental concepts which is the subject of Islamic Banking Law development with justice on Syariah credit card is the concept of *maqasid at-tasyri* 'or *maqasid al-syariah* which asserts that Islamic law is desirable to realize and preserve the *maslahah* of mankind. This concept is expected to make syariah credit card with profit sharing system can improve the real business sector in Indonesia.

As for the essence of the concept of *maqashid al-syariah* is to realize the good at the same time avoid the ugliness or taking benefit and reject harm, the term is commensurate with the core of the *maqashid al-syari'ah* is *maslahah*, because the determination of the law in

Islam must lead to *maslahah*. Related to that, to understand the nature and role of *maqashid al-syari'ah*, the following will be briefly described the theory.

On the *'Illat* (the law enforcement motive), is manifested to create benefit or advantage to human.<sup>29</sup> To make it real, al-Syatibi has divided *Maqashid* into three levels, namely: *Maqashid dharuriyat*, *Maqashid hajiyyat*, and *Maqashid tahsiniyat*. *Dharuriyyat* should be present for the sake of human *maslahah*, if it is not, it will cause riot, for example the five pillars of Islam. *Hajiyyat* is something that we need to solve problem, such as *rukhsah* (dispensation) for not fasting for someone who is sick. *Tahsiniyyat* is something which is taken for a life goodness and preventing the worse, for example good attitude, cleaning the dirt, and covering aurat (part of body which may not be visible to be seen by others in Islam). *Dharuriyyat* in detail contains five goals, namely; (1) keeping the religion (*hifzh ad-din*); (2) keeping the soul (*hifzh an-nafs*); (3) keeping the mind (*hifzh al-'aql*); (4) keeping the descendants (*hifzh an-nasl*); (5) keeping the wealth (*hifzh al-mal*).<sup>30</sup>

#### 1.3.2 The Concept of Financing

Financing comes from the word cost, which in the Indonesian Dictionary, the cost is defined as money spent to organize (establish, perform, etc.) something, cost, shopping, while the definition of financing is anything related to cost.<sup>31</sup> In a broad sense, financing or expenditure is defined as funding incurred to support planned investments either by themselves or by others. Relating in a narrow sense, financing is used to define financing by financial institutions such as syariah banks to customers.<sup>32</sup>

The definition of financing can be found also in some laws and regulations, such as according to the Acts Number 10 Year 1998 on Banking, Financing based on Syariah Principles is the provision of money or bills equivalent to it based on the agreement or contract between the bank and other parties obliging the parties financed to refund money or savings accounts after a certain period of time in return or profit sharing.<sup>33</sup> With regard to this understanding, the definition of the Syariah

<sup>29</sup>Al-Syatiby. *al-Muwafaqat fi Ushul al-Syari'ah*. (Kairo: Mustafa Muhammad, t.th.), p. 2-3.

<sup>30</sup>*Ibid*, p. 5.

<sup>31</sup>The Language Center. *Indonesian Dictionary*. (Jakarta: Pusat Bahasa Departemen Pendidikan Nasional, 2008), p. 196.

<sup>32</sup>Muhamad. *The Syariah Bank Management*. Yogyakarta: (UPP) AMPYKPN, 2002), p. 260. (hereinafter referred to *Muhamad I*)

<sup>33</sup>Look at Article 1 point 12, The Acts Number 10 Year 1998 on Banking

<sup>26</sup>Muhammad Sa'id Ramdan al-Buti. *Dawabit al-Maslahah fi as-Syariah al-Islamiyah*. (Beirut: Mu'assasah ar-Risalah, 1977), p. 12.

<sup>27</sup>Al-Syaukani. *Irsyad a Fuhul Ila Tahqiq al Eal min 'lim al-Ushul*. (Beirut : Dar al-Fikr, t.th.), p.242.

<sup>28</sup>Al-Ghazali. *Al-Mustafa min 'ilm Al-Ushul (Juz 1)*. (Bairut : Dar Al-Fikr, t.th.), p. 286.



Principle itself is the rule of agreement under Islamic law between banks and other parties for the deposit of funds and / or financing of business activities, or other activities stated in accordance with syariah, such as financing based on the principle of profit sharing (*mudarabah*) financing based on the principle of equity participation (*musyarakah*), the principle of sale and purchase of goods by obtaining profit (*murabahah*), or financing of capital goods based on the principle of pure lease without option (*ijarah*), or with the option of transferring ownership of leased goods from the bank by other parties (*ijarah wa iqtina*).<sup>34</sup>

In connection with the above explanation, in order to reinforce the definition of financing based on syariah principles, The Acts Number 21 Year 2008 on Syariah Banking states that the financing is the provision of funds or bills that are equalized with it, in the form of:

- a. profit-sharing transactions in the form of *mudarabah* and *musharakah*;
- b. lease transactions in the form of *ijara* or lease purchase in the form of *ijara muntahiya bittamlik*;
- c. sale and purchase transactions in the form of *murabahah*, *salam*, and *istishna* 'receivables';
- d. lending and borrowing transactions in the form of *qardh* credit; and
- e. service lease transactions in the form of *ijarah* for multilateral transactions based on approval or agreement between syariah Bank and / or syariah Unit Business and other parties requiring party financed and / or granted fund facilities to refund the funds after a certain period of time with rewards (*ujrah*), without rewards, or profit sharing.

Another definition related to the definition of financing is also delivered by Syafi'i Antonio who gave his opinion that the financing is one of the main task of the bank is the provision of funding facilities to meet the needs of parties that are the *unit deficit*.<sup>35</sup>

Based on the definition of financing above, it can be concluded that financing basically should be based on the principles of syariah, where it can be found in syariah banking. According to that, the principles of syariah financing as intended are:<sup>36</sup>

1. Syariah financing does not deal with usury (interest). This is because in syariah financing, the lender (creditor) should not get interest and the debtor is not paying the interest. The creditor may make a profit through the purchase of the asset, then sell the asset to another person by a certain margin or profit margin.
2. Syariah financing should not aim to fund illegal assets or activities (prohibited).
3. Syariah financing emphasizes obligations to (prohibit).
4. Syariah financing requires the obligation to disclose information for the sake of protecting the weak. Thus, there is a transparency of contracts in which all partners are given complete information related to the cooperation project undertaken to make the project run smoothly for mutual benefit, and free of *gharar* (uncertainty) elements.

### 1.3.3 The Concept of *Murabahah* Contract

In Syariah Banks, the product of distributing the funds to the community is called as non-credit financing. The use of such financing terms is based on the objectives of syariah bank, which is to finance a need for working capital or the need for capital procurement. So, in the distribution of funds, it uses the term of financing. Related to this, one of the financing products at the syariah bank is *Murabahah*.

*Murabahah* or *Al - Murabahah* etymologically, derived from the word *Ribhu*, which means profit, in this case is intended as a gain mentioned in the sale and purchase.<sup>37</sup> Thus, *Murabahah* according to *fiqh* experts is, buying and selling merchandise by mentioning the purchase price of goods to the buyer and its profit,<sup>38</sup> whereas in terminology, understanding of *murabahah* contract is buying and selling of goods with cost of goods plus certain profit agreed. In practice, *Murabahah* is one type of sale and purchase financing with a profit margin, which means buying and selling of goods at the original price with an additional price of profits that have been agreed.<sup>39</sup> In line with that understanding, Ibn Muqadaman in Muhammad defines *murabahah* as selling at the origin, plus an agreed profit margin.<sup>40</sup>

In general, syariah banks adopt *murabahah* concept to provide short-term financing to customers for the purchase of goods, although customers may not have

<sup>34</sup>Look at Article 1 point 13, The Acts Number 10 Year 1998 on Banking.

<sup>35</sup>Muhammad Syafi'i Antonio. *Syariah Bank from the Theory to the Implementation*. (Jakarta : Gema Insani Press, 2001), p. 160. (hereinafter referred to *Muhammad Syafi'i Antonio II*)

<sup>36</sup>Daud Vicary Abdullah and Keon Chee. *Islamic Finance : Why it Makes Sense*. Translated by Satrio Wahono in the *Book of Syariah Smart Finance*. (Jakarta: Zaman, 2012), p. 177.

<sup>37</sup>Burhanuddin (I). *Op. Cit.*, p. 82.

<sup>38</sup>Moh.Zuhri. *The Translation of Fiqh from 4 Mazhab, the Third Book*. Bandung : Asy-Syifa, 1994).

<sup>39</sup>Muhammad Syafi'i Antonio (II). *Op Cit.* p. 101.

<sup>40</sup>Muhamad. *The system and Operational Procedure of Syariah Bank*. (Yogyakarta: UII Press, 2003), hlm. 23. (hereinafter referred to *Muhamad II*)

the money to pay.<sup>41</sup> Related to this, *murabahah* financing payment can be done by installment or cash in accordance with the agreed timeframe.<sup>42</sup> In the implementation of Islamic banking, the bank as the owner of the fund to buy or authorize the customer who needs financing to buy goods required customers on behalf of the bank, then the bank sells the goods to customers at a price equal to the cost of goods plus a profit margin / mark up to be paid by the customer within a certain period according to the agreement between the customer and the bank.<sup>43</sup> *Murabahah* financing, can be done with 2 systems, namely:

1. *Murabahah* with *Bai'u Salam* System.

*Murabahah* in the context of *Bai'u Salam* is a sale and purchase with a profit margin in which the buyer makes a prepayment and the seller just sends the order from the buyer, in other words, *murabahah* with *Bai'u Salam* system is a sale and purchase with additional profit margin which is done by way of a message.

2. *Murabahah* with *Istishna Bai'u* System.

The second way is *murabahah* with the *Istishna* system, which is a specific form of *Bai'u Salam*, specifically use in manufacturing financing only.

*Murabahah* is a part of buying and selling that is recommended in *mu'amalah* Islam. In connection with *Murabahah* as a part of the sale and purchase, the pillar found in *Murabahah* is the same as the pillars contained in the sale and purchase according to Islam. The pillars contained in the sale and purchase according to Islam is:

1. The existence of the subject, in this case are the seller and the buyer. Requirements that must be fulfilled by the parties, including:
  - a. Has a common sense  
That is to distinguish or determine what is good and bad, and if one party is not intelligible, then the sale is not legitimate. An example of a crazy person can not make a sale.
  - b. By his own willingness

Related to this, in buying and selling, one party should not be in a pressure or coercion, it means that the sale and purchase must be on the basis or the will of him self, not coercion from others.

- c. Not wasted (spenders).

People who are wasteful in the law are categorized as incompetent or incompetent to perform legal acts so they must be in the custody / guardianship.

- d. *Baligh* (aged 15 years and over / adults)

*Baligh* or adult in Islamic law is when it is 15 years old, or has dreamed (for boys) and menstruation (for girls). In this regard, Islamic law never makes a law which creates difficulties for its adherents. In this regard, for children who have been able to distinguish which is good and bad, but immature, in the opinion of some Muslim scholars that the child is allowed to perform buying and selling, especially for small and high value items.

### 1.3.4 The Concepts of Syariah Financing Card

Financing according to the Acts Number 10 Year 1998 on Banking defines financing based on Syariah Principles is the provision of money or equivalent claims based on agreement or contract between the bank and other parties requiring the party financed to refund the money or savings bill after a certain period of time with rewards or profit sharing.<sup>45</sup>

The Syariah Credit Card is a bailout card facility used by the cardholder (*pregnant al-bithaqah*) as a means of paying or withdrawing cash at certain places which must be paid in full to the bidder (*mushdir al-bithaqah*) at the appointed time.<sup>46</sup>

Another definition is also put forward by the National Syariah Council - Majelis Ulama Indonesia (hereinafter referred to as DSN - MUI) which states the Syariah Credit Card is a card that functions like a Credit Card which the legal relationship (based on the existing system) between the parties based on syariah principles as stipulated in this fatwa.<sup>47</sup> This definition implies that the use of syariah credit cards should be based on syariah principles.

<sup>41</sup>Muhamad. *The calculation sharing Technique and margin Profit in Syariah bank*. Yogyakarta: UII Press, (2004), p. 93. (hereinafter referred to Muhamad III)

<sup>42</sup>Cecep Maskanul Hakim. *A textbook: Syariah Banking*, Presented in the Training of Trainers Syariah Banking cooperated with Syariah Banking Department of Indonesian Bank with Economy Faculty, Brawijaya University. 6th – 8th September 2005.

<sup>43</sup> Warkum Sumitro. *The Principle of Islamic Banking and other related Institutions*. (Jakarta : Raja Grafindo Persada, 1997), p. 93.

<sup>44</sup>Chairuman Pasaribu and Suhrawardi. *Op. Cit.*, p. 34-36.

<sup>45</sup>Look at Article 1 point 12, The Acts Number 10 Year 1998 on Banking

<sup>46</sup>Ulul Azmi Mustofa. *Syariah Card Al-Maqasid Syariah Perspective*. Scientific Journal of Islamic Economy. Vol. 01, No. 01, Maret 2015, p. 19.

<sup>47</sup> Look at fatwa National Syariah Council - Majelis Ulama Indonesia No: 54/DSN-MUI/X/2006 on The Syariah Card.

## II. RESEARCH METHODS

### 2.1 Types of Research and Approach

The type of this research is a normative legal research to analyze the Financing Cards Based on *Murabahah* Contract. Normative research usually called as a doctrinal research, which aim is to give detailed explanation systematically on the specific law area, analyze the relation between one specific law to others, explain some difficult parts to be understood in law, even predict the development of a particular law at a certain level in the future.<sup>48</sup>

### 2.2 The Type and Legal Material Resources

This research is based on a *normative prescriptive* legal material. The legal materials in this research is used to analyze the law problem that included in the positive law matter textually or not limited to the norms, but also to the principle and values that related to the financing card based on *murabahah* contract, *maqashid syariah* theory, and expediency theory (utility). According to that, Soerjono Soekanto has divided the legal material resources into three types, namely; the primary law, the secondary law, and the tertiary law.<sup>49</sup>

### 2.3 The Legal Material Investigation Technique

In this study, the data collection and tracing of legal materials is done by using systematic literacy method, namely the searching documents related to the principle of expediency, financing cards, *Murabahah* contracts, literature and legislation that describes the *Murabahah* contract mechanism.

### 2.4 The Legal Material Analysis Technique

The legal material analysis technique is very important to determine which is the relevant and useful reference for the research topic. According to that, some steps that can be done in legal research is identifying the legal fact and eliminating the irrelevance issue, collecting legal material and non legal material but still related to the research, doing an analyses on the legal issue based on the data that has been collected, then organizing or formulating the conclusion on the legal issue, and giving prescription based on the formulating argumentation that

has been formulating into the conclusion.<sup>50</sup> All those legal materials will be arranged systematically in order to provide prescriptions on what should be done related to the legal issue.

The next step, after the researcher collecting data that are subjected to the research, and then based on the legal issue that have been formulated and classified according to the source and the hierarchy will be reviewed comprehensively. Various information and data obtained in this research will be analyzed using the content analysis method<sup>51</sup>, in order to compare the credit card contract and *murabahah* contract with the legal regulations, to draw a conclusion.

## III. THE RESULTS AND DISCUSSION

### 3.1 The Relevance of Expediency Theory (utility) to the Credit Card

In the millennial era, almost all economic activities can not be separated from the use of technology, including on business transactions, where non-cash transactions have become a trend in itself, especially among modern-minded people. Non-cash transactions as mentioned are realized in credit card issuance which is a modern means of payment in order to provide convenience to the public in conducting transactions. In its use, as a modern means of payment, credit cards provide many benefits to society. Credit cards are issued not only for the benefit of the issuer (bank), but also for the cardholders (customer) and merchant benefits.

#### a. The Advantages for the cardholders.<sup>52</sup>

The existence of credit cards has made the cardholders (customers) can easily make transactions without having to carry money (cash). It is also an attempt to minimize the risk of loss and theft of money, because if the card is lost then the card holder can immediately contact the issuer to block the card. Then, the blocked cards can no longer be used as tools for payment to merchants. Some benefits of the credit card for the cardholder are:

1. Provide a sense of security, increase confidence, prestige, feel modern, practical, and feel safe while making payments.
2. Providing a sense of security, because it does not need to bring cash, thus preventing the occurrence of crime such as robbery.

<sup>48</sup>Dyah Ochtorina Susanti and A'an Efendi. *Legal Research*. (Jakarta: Sinar Grafika, 2014), p. 10. (hereinafter referred to Dyah Ochtorina Susanti I)

<sup>49</sup>Dyah Ochtorina Susanti. Dissertation: *The Forming of Commanditaire (Commanditaire Vennootschap) Based on Musyarakah Contract*. (Malang: Doctor of law Program, Brawijaya University, 2011), p. 35. (hereinafter referred to Dyah Ochtorina Susanti II)

<sup>50</sup>Peter Mahmud Marzuki. *Legal Research, 12th Edition*. (Jakarta: Prenadamedia Group, 2016), p. 212.

<sup>51</sup>Valerina JL Kriekhoff. *The Content Analyses on Legal Research. : A beginning Analyses*. Era Hukum Journal. No.6, 2002, p. 27.

<sup>52</sup>Burhanuddin (I). *Op. Cit.*, p. 252.

3. Expect customers in transacting or shopping using cards, so there is no need to bring cash to eliminate the risk of loss and theft.
4. Facilitate customers to get cash every 24 hours in various strategic places, making it easier to meet the needs of cash abruptly.
5. The risk of loss and theft of money is lower because if the card is lost then the card holder can immediately contact the issuer to block the card. Blocked cards can no longer be used as tools for payment to merchants.
6. Cardholder is free from counterfeit money circulating, because all done with computerized system, not cash money.
7. Proof of guarantee for a person who allows the owner to obtain a loan in accordance with the limit for the purchase of a required item.

b. The Advantages for the merchants<sup>53</sup>

The benefit from credit card is not only obtained by cardholders and issuers, but also felt by the merchant. Merchants do not have to count cash, and also the risk of unpaid money. Some benefit of the credit card for the merchants are:

1. Increase the sales because the cardholders feel safer to shop at the merchant's premises.
2. Can reduce the burden of the merchant's work because every sales transaction, merchant only need to hand in the sales draft or sales letter for the next merchant will collect the paper to the issuer. This is certainly very practical because it does not have to count the cash, and also avoid the risk of unpaid money.
3. Can be used to promote his business, because the merchant's name will be listed in the advertisements posted by the issuing bank.

c. The Advantages for the Issuers<sup>54</sup>

Credit cards are also useful for issuers, because with a credit card, the issuer can promote the bank concerned and the bank earn fee base income from publishing services. Some benefit of the credit card for the Issuers are:

1. The promotion media and improve the image of the bank because according to the provisions, only banks that are classified as healthy or healthy enough and have been approved by Bank Indonesia that can issue credit cards.
2. Can help the community, especially for the upper middle class in facilitating the financing system.

3. Obtaining fee base income from publishing services. The income is in the form of joining fee and annual fee from cardholder. Not only income from cardholder, Issuer also gets revenue from merchants in the form of discount rate collecting in accordance with the agreement of the parties.

The benefits of these credit card transactions are in line with what Jeremy Bentham<sup>55</sup>, (known as the father of the theory of expediency (utility)) said. According to the utilitarian, an action is considered as a good action if it brings happiness, and vice versa an action is considered as a bad action if it brings harm and unhappiness. It is not only the happiness for the person who did the action but also happiness for others or we can say that utilitarian emphasizes more to the benefit.<sup>56</sup>

Related to what has been mentioned earlier that according to Bentham, utility is something that we can have and bring benefit, profit happiness, and pleasure or something that can prevent destruction, harm, misery, crime, and unhappiness.<sup>57</sup> Bentham also argues that the purpose of the law is to realize what is beneficial or appropriate to the interests of the people. This corresponds to his famous motto which is the Greatest Happiness for the Greatest Number.<sup>58</sup> The motto implies that human will be as good as they are in the same way as to have the greatest pleasure and experience of the sufferer, so that it can be said that the good thing is that the measurement is measured whether the act brings happiness or not.<sup>59</sup>

Related to the meaning of happiness, Bentham in Otje Salman asserted that the essence of happiness is a pleasures and a life free from misery<sup>60</sup>. In this regard, in

<sup>55</sup>Jeremi Bentham, is a economic and law philosopher and law reformer. He has an ability to weave the thread "the expediency principle" (utility) to be a doctrinal ethic and law science, well known as "*utilitarianism*" or usefulness thought. Look at Yuli Asmara Triputra. *The Crisis to the Utility Theory by Jeremy Bentham*. Disiplin Magazine, Vol. 15 No. 3, September 2011, p. 37.

<sup>56</sup>Khazanah. *Jeremy Bentham*. Padjadjaran Law Journal, Vol. 2 No. 2, 2015, p. 413.

<sup>57</sup>Khazanah. *Op. Cit.*, p. 416.

<sup>58</sup>Jeremy Bentham. *The Theory of Legislation, Civil and Criminal Law*, translated by Nurhadi from *The Theory of Legislation*. (Bandung: Penerbit Nusamedia & Penerbit Nuansa, 2006), p. 1

<sup>59</sup>Lili Rasjidi and Ira Thania Rasjidi dalam Hengki Firmada. *Syari'ah Card for Utility Theory and Masalahah*. Law Journal. Vol. 4 No. 2 Februari-Juli 2014, p. 263.

<sup>60</sup>Otje Salman. *The Philosophy of Law ( The Development and The Dynamic of Problems)*. (Bandung: Refika Aditama, 2012), p. 44.

<sup>53</sup>*Ibid.*

<sup>54</sup>*Ibid.*, p. 253.



examining the value of happiness, there are 4 (four) objectives that can be found in the happiness:<sup>61</sup>

1. Source of income or provide for a living,
2. Prosperity,
3. Equality, and
4. Safety.

These four objectives are then the guidance in placing civil and business law as an achievement of Benefit by Bentham. The more perfect the achievement of happiness in all these aspects (example, providing for a livelihood, prosperity, equality, and security), the greater the overall social fare.

Based on the above explanation, in essence, the benefit according to Bentham is all human actions associated with his desire. The desire of all human beings is to achieve useful happiness and prevent them from suffering, so that this beneficial happiness leads to individualistic beliefs. The individualist belief means that everyone has full freedom to pursue his interests. Thus, if everyone is given the freedom, then society will develop their desires, and that will become public interest. Everyone has the right of freedom to get the opportunity related to what he wants and needs.<sup>62</sup>

Referring to Bentham's theory, credit cards exist to provide convenience to customers. Ease of credit card certainly helps to alleviate and even solve customer problems related to payment or transaction activity that customer do not need to bring cash in doing transaction, simply by swipe credit card at Electronic Data Capture (EDC) machine, then payment by customer is complete. The existence of credit cards also facilitates merchants (traders) in the process of payment, because merchants (traders) do not need to calculate the bill directly. It also proves that credit cards are a very useful tool or media. Related to this, the benefits in credit cards can be proven that credit cards also give happiness to the parties involved in credit card use. Happiness as intended can be found in the issuing credit cards purposes, namely:

1. Source of income or providing for a living

Credit cards nowadays have become a necessity and lifestyle applied by people who always put forward the comfort and convenience especially in the transaction. It also includes transactions related to business activities. The willingness and passion of someone to run a business sometimes not balanced with financial or material capabilities. This is then the reason some people are still reluctant to entrepreneurship or develop their business.

With regard to these problems, the bank then provides facilities to provide business capital for the community or customers who have problems related to financial through a credit card. A credit card is a tool that can be used by customers to make payments on goods or service bill. In this regard, customers can shop for the needs that support their business using the credit card. This proves that credit cards are the breadwinners, meaning that even if the customer does not have the money, but customers can still run the business, so that customers get income in order to meet the needs of everyday households.

Credit card benefits are also felt by the issuer (bank), where with the issuing of credit, the bank will get a fee (*ujroh*) in return for the use of credit card facilities. This proves that the credit card also aims to provide maintenance to the issuer (bank).

2. Prosperity

The use of credit cards that can be used to provide business capital will provide prosperity for the customer. This means the running of the business undertaken by the customer, it will provide income for these customers. Especially if the business is pioneer and make a rapid development, so the profits are also great. This will certainly improve the economy of the customer, so the prosperity and welfare of customers can be guaranteed.

3. Equality

The purpose of equality in this case is also interpreted in common, meaning that credit cards can be published and used for anyone, not to question social status, ethnicity, any religion. Credit cards can be utilized by everyone both for business activities and for consumptive transactions such as shopping in stores, and so forth. Facilities obtained by customers are also the same, whether customers from lower, middle, or upper class, all get the same service. It's just that distinguishes that of the type of credit card, where each type on the credit card has different provisions, but related to its users, they have equal rights and services.

4. Safety

Credit cards as a non-cash payment tool make it easy for its users to make transactions. Customers do not need to bring cash either in small quantities or in large quantities. It certainly benefits customers, because it can prevent the occurrence of crimes that often occur in shopping centers, such as theft, robbery, and so forth. Even if the credit card is lost, then the customer can immediately contact the bank to block the card. Blocked cards can no longer be used as tools for payment or transactions. In this way, credit cards are proven to provide a sense of

<sup>61</sup>Jeremy Bentham. *The Theory of Legislation*, translated by Nurhadi. (Bandung: Nusa Media, 2010), p. 125.

<sup>62</sup>Hengki Firmanda. *Op. Cit.*, p. 264.

security for customers, so customers can perform their activities safely and comfortably.

Based on the explanation described above, it can be found the relevance between the theory of usefulness (utility) with credit card as a means of modern payment, providing many conveniences and benefits in the midst of the rapid development of the business world and spoiled by technological sophistication.

### 3.2 The Relevance of Usury in A Credit Card

In today's modern era, people's lifestyles are an important thing to study, as are credit cards that have become a lifestyle for some people. The use of credit cards is not just limited to shopping again, but some people use it as a social status identity. Related to this, some customers who apply for credit cards on average are high-class people or platinum cards upwards.

Another reason for the high demand for credit card issuance is also due to the ease of using credit cards in transactions, so people become more interested in making transactions again and again with credit cards, without thinking about the ability to pay the bills or installments in the coming months. Even though using credit card we can make payments in installments, but on the bills there will be interest charged, and this can certainly make the price of purchased goods to be more expensive than it should be. Related to this, the following disadvantages on credit cards are:<sup>63</sup>

1. The percentage of interest is very high.  
On the credit card system, credit is given on loan agreement, and the customer is required to return the loan with interest. The Customer bears an interest rate of 3-4% per month as a form of profit taking on the payment of the installment. Interest will also be levied again when the customer can not pay the full bill. When the customer repays the entire debt before the due date, there will be interest calculation based on the number of days of total withdrawal plus the withdrawal fee.
2. In Every transaction, customer will be charged with some interest.
3. Administrative expenses and interest expenses are too high to make cash at ATMs. On credit cards, when withdrawing cash will be charged withdrawal fees of 4-10% of the withdrawn nominal, depending on the respective bank of the card issuer. In addition, cash advance interest costs are much higher when compared with retail or shopping costs. Implementation of interest that is too high as mentioned, certainly bring losses for

customers, especially if using a credit card for consumer transactions. When credit cards are used without control, meaning they are used for continuous shopping regardless of the customer's ability to pay bills, the credit card can backfire and unprofitable, because in the end the credit card can make the bill swell. Ultimately not the benefits gained, but will cause harm and misery.

The case of the death of Irzen Octa, a Citibank customer found dead at Jamsostek Tower Building Gatot Subroto street on March 29, 2011, where based on several sources reported that the death of Irzen Octa allegedly persecuted by debt collector, which is strengthened from the results of the Cipto Mangunkusumo Hospital (RSCM) Official Statement (*Visum*), which found bruises caused by blunt thing which result the rupture of the lower blood vessels of the brain stem and cause bleeding in the brain chamber to clog the fluid channels of the brain and suppress the brain stem. The assault and abttery occurred related to the collecting debt by collector to the customer with the amount of 100.515.663 rupiahs.<sup>64</sup>

The next case occurred in 2014, happened to a customer named Agustinus Reinhard (customer of Indonesian National Bank (BNI)). Initially, Augustine received credit card bills on behalf of his brother. Feeling that his bill was settled, Augustine then came to BNI to ask for an explanation and requested a letter of repayment to the bank, and there was a bickering between Augustine and the bank. Feeling that he did not have any dependency, Augustine then left, and when he was about to wear a helmet, a debt collector approached Augustine and immediately persecuted him to inflict injuries on the jaw.<sup>65</sup>

Persecution due to the credit card billing issues was also experienced by Edy Donald in 2016. The incident started when a debt collector went to Edy's house, to meet his mother named Natalia while shouting. Hearing that, Edy Donald then approached the debt collector to speak well, but the debt collector did not care about it and tried to contact two friends who are not far from the scene. After the debt collector's colleague came, then the third debt collector attacked and beat Eddy which resulted in bruises on some parts of his body and leg bones.<sup>66</sup>

<sup>64</sup><https://skalanews.com/berita/hukum/kriminal/99140-jpu-kronologis-akibat-kematian-irzen-octa>, Accessed on 19th of March 2018.

<sup>65</sup><https://news.detik.com/berita/2552757/polisi-tangkap-debt-collector-yang-menganiaya-nasabah-kartu-kredit/komentar>, Accessed on 19th of March 2018.

<sup>66</sup> <http://www.beritamometer.com/nasabah-tetap-tuntut-bca-finance-bertanggung-jawab/>, Accessed on 19th of March 2018.

<sup>63</sup>Solikhah. *Op. Cit.*, p. 50-51.

The three cases above show what happened when the customer as a credit card user persecuted because being laced by usury due to the imposition of high interest from the bank, therefore, the credit card bills swell. It is as evidence that credit cards can also bring *mudharat*<sup>67</sup> for its users.

Related to the relationship between interest and usury, basically the two terms have the same meaning that is extra money, generally in percentage,<sup>68</sup> or in other words that the interest is forbidden in Islam (*haram*). More clearly, in the congress of the world's Islamic scholars, which took place in the month of Muharram 1385 H / May 1965, organized by the Islamic Research Center, Al-Azhar, in Cairo, produced a decision, one of which explained that interest of various kinds of loan is usury which is forbidden, although the loan is due to emergency or need.<sup>69</sup>

Interest itself according to Muhamad is a dependent or loan money, which is usually expressed by the percentage of money lent<sup>70</sup>. Another definition was conveyed through the MUI Fatwa on 16<sup>th</sup> December 2003, issued at the MUI's National Working Meeting, stipulating that interest is an addition to the borrowed money transaction calculated from the principal of the loan without considering the utilization or yield of the principal, based on period of time, and taken into account definitely upfront based on percentage.<sup>71</sup>

Based on the definition of interest above, it can be concluded that the interest includes usury and forbidden (*haram*) in Islamic Law. In this regard, the teachings of Islam have banned the existence of usury in any field including in economy sector, then as a Moslem we have to avoid any kind of usury. The prohibition for Moslem to get involved in any kind of usury is mentioned in the Qur'an and the Hadits of Prophet Muhammad SAW. Here are the explanations of the prohibition of usury in the Qur'an.<sup>72</sup>

#### 1. The prohibition of usury in the Qur'an

The prohibition of usury in the Qur'an is not directly mentioned all at once, but it is mentioned in four phases, namely: *first phase*, refuse the belief that as if usury loan helps people as a action which is close to that

or *taqarrub* to Allah SWT. The basis of this phase can be found in the Qur'an Surah Ar-Rum verses 39.<sup>73</sup>

In the *second phase*, usury is described as a bad thing. Allah SWT will give punishment to the Jewish who take the usury. It is emphasized in the Quran Surah An-Nisa' verses 160.<sup>74</sup> In the Qur'an Surah An-Nisa' verses 161<sup>75</sup> explain the punishment for people who do any activities related to usury. People who do activities related to usury is basically taking other's wealth illegally and will be punished poignantly. The *third phase*, usury is *haram* because it makes multiple benefit expansion. Many Muslim scholars argue that taking interest with a high rate is a common phenomenon that happened in that era. Allah mentions in the Qur'an Surah Al-Imran verses 130<sup>76</sup> and explains the prohibition to take the usury as a form of pious to be a lucky group.

The *last phase* is mentioned in the Qur'an Surah Al-Baqarah verses 275 - 279. In the Qur'an Surah Al-Baqarah verses 275<sup>77</sup>, illustrates the person who runs any activity related to usury is like a madman, a person who has no sense to distinguish between buying and selling and usury, whereas it is clearly stated that usury is forbidden and prohibited. This verse is one of the legal basis for the operation of syariah bank which abandon the use of interest system and apply its use as trade agreement in syariah bank products. Allah SWT has clearly stated

<sup>73</sup>"And whatever you give for interest to increase within the wealth of people will not increase with Allah. But what you give in zakah, desiring the countenance of Allah-those are the multipliers." From the Qur'an translated by Saheeh International. London: Al Mustada Al Islami. p. 396

<sup>74</sup>"for wrongdoing on the part of the Jews, We made unlawful for them (certain) good foods which had been lawful to them, and for their averting from the way of Allah many people." *ibid.* p.92

<sup>75</sup>"And for their taking of usury while they had been forbidden from it, and their consuming of the people's wealth unjustly. And we have prepared for the disbelievers among them a painful punishment" *Ibid.*

<sup>76</sup>"O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful" *Ibid.* p.60

<sup>77</sup>"Those who consume interest cannot stand (on the Day of Resurrection) except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is just like interest". But Allah has permitted trade and has forbidden interest. So, whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns (to dealing in interest or usury), those are the companion of the fire, they will abide eternally therein". *Ibid.* p.42

<sup>67</sup>According to Indonesian Dictionary, *Mudharat* means disadvantage (unuseful, Useless), means as an action that should be avoided. Look at Pusat Bahasa. *Op. Cit.*, p. 975.

<sup>68</sup>Muhamad (I).*Op. Cit.*, p. 41.

<sup>69</sup>Aries Mufti. *The Bank Interest: Maslahat or Trick?* (Jakarta: PT. Pustaka Quantum, 2004), p. 22.

<sup>70</sup>Muhamad (I).*Op. Cit.*, p. 40.

<sup>71</sup>Aries Mufti.*Op. Cit.*, p. 31.

<sup>72</sup>Muhammad Syafii Antonio (I). *Op. Cit.*, p. 48.

that any kind of interest for any loan is *haram*. It is mentioned in the last verse related to usury in the Qur'an Surah Al – Baqarah verses 278 – 279<sup>78</sup> which explain that people who believe in Islam should avoid the usury. This verse also explains that Allah and The Prophet Muhammad will against the person who is doing usury, and also a chance for repent all the sin that has been done for not to be cruel and not getting a cruel treatment.

## 2. The prohibition of usury in the *Hadits*

One of the argumentation that prohibits the usury beside the Qur'an is in the Al-Hadist. It is a part of the principle of *hadits* which is to explain more detail the content in the Qur'an. Related to usury, the explanation of usury in *hadits* is deeper. For example, in the end of 10th Hijriah, on the 9th of Dzulhijjah, Rasulullah SAW (the Messenger of God), asserted that usury<sup>79</sup> is forbidden. Furthermore, in the Muslim Hadist it is said that Rasulullah will curse anyone who consume usury<sup>80</sup>.

The fundamental background of Syariah Banking is to avoid usury because in Islam the practice of usury in any field including the economy is *haram*. This is in line with the provisions of the Qur'an Surah Al-Baqarah verse 275<sup>81</sup>. The verse illustrates the person who practices the usury just like an insane.

According to the explanation above, the word usury or *ziyadah* means growing, adding, or excessive. The definition added in this case is defined as additional money on capital obtained in a way that is not justified in

*syara'*, either additional in small or large amount.<sup>82</sup> At the level of English, *riba* is translated as usury which means:

*"The act of lending money at an exorbitant or illegal rate of interest"*

(The RIT Translation: An act of lending money with too high interest and it is not allowed (illegal)). The Muslim scholars also argue that usury is an excess of wealth in a *muamalah* with no reward or replacement. It means an addition to the capital money arising from a debt transaction that must be given to the debt owner when the debt is due.<sup>83</sup> Regarding to the usage of usury, the experts have different opinions. Abu Sura'i Abdul Hadi in Mohammed divides usury into 2 types, namely *fadh*l usury and *nasi'ah* usury. Besides, some people also divide usury into 4 types, as mentioned by Burhanuddin namely; *qardh* usury, *jahiliyyah* usury, *nasi'ah* usury, and *fadh*l usury. Based on these opinions, the researchers divide the usury into 3 types, namely:

### 1. *Fadh*l Usury

The excess of the same kind of wealth in a trading by the *syara'* law (scale or specific measurement) For example, 1 liter of rice is used with 1 ¼ liters of rice. The excess of ¼ kilogram is called as *fadh*l usury.<sup>84</sup> *Fadh*l usury arise in the exchange of the same types which do not meet the criteria according to the quality, quantity, and transfer that are not routinely performed. This type of exchange contains uncertainty (*gharar*) for both sides to the good which is being exchanged. In the Financial Institution, *fadh*l usury can be found in the foreign money exchange that is not using cash.<sup>85</sup>

### 2. *Jahiliyyah* Usury

*Jahiliyyah* Usury is the increase amount of debt to the borrower who can not pay the debt on the maturity date,<sup>86</sup> or the debt which the amount is more than the principal of the borrower if they cannot pay the debt in the maturity date.<sup>87</sup> This situation is being used by the creditor to take advantage. In the

<sup>78</sup>"O you have believed, fear Allah and give up what remains (due to you) of interests, if you should be believers. And if you do not, then be informed of a war (against you) from Allah and His Messenger. But if you repent, you may have your principal, thus you do not wrong, nor are you wronged." *Ibid*.

<sup>79</sup>"Remember, that one day you will be returned to Allah and He will count on your good deed. Allah has forbidden you to consume usury. Therefore, loan caused by the usury should be abolished. The basic money is your right. You will not feel misery or unfair."

<sup>80</sup>"Rasulullah will curse people who consume usury, who give the usury, the writer and the witness of them. Then the Messenger said that they are basically doing the same activity"

<sup>81</sup>Those who consume interest cannot stand (on the Day of Resurrection) except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is just like interest". But Allah has permitted trade and has forbidden interest. So, whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns (to dealing in interest or usury), those are the companion of the fire, they will abide eternally therein". *Op.Cit.* p.42

<sup>82</sup>Muhamad. *Syariah Bank : The Analysis of the Strength, Weakness, Chance and Threat*. (Yogyakarta: Ekonisia, 2002), p. 28. (hereinafter referred to Muhammad IV)

<sup>83</sup>*Ibid*.

<sup>84</sup>Muhamad. *The Islamic Finance Institution*. (Yogyakarta: UPP STIM YKPN, 2017), p. 104-105. (selanjutnya disebut Muhamad V)

<sup>85</sup>Adiwarman Karim. *The Islamic Analyses and Finance to the Islamic Bank*. (Jakarta : PT RajaGrafindo Persada 2011). p 37. (hereinafter referred to Adiwarman Karim I)

<sup>86</sup> Muhamad (V). *Op. Cit.*, p. 107.

<sup>87</sup>Muhammad Syafi'i Antonio (II). *Op. Cit.*, p. 41.



Syariah Banking this is forbidden because it is a part of usury.<sup>88</sup>

### 3. *Nasiah* Usury

The *Nasiah* Usury is the excess that will be earned by the creditor given from the debtor when exceeded the maturity date. Then, if in the exceeded time the debtor still cannot pay the loan, there will be another agreement that the amount of money that the debtor should pay will be increased.<sup>89</sup> The *Nasiah* Usury also means as an adding money as a requirement from the debtor to the creditor as the compensation of maturity date.<sup>90</sup> In the conventional Bank, the *Nasiah* Usury can be found in the credit interest and deposit interest, and other saving interest. Bank as a creditor who gives the loan requires the payment of fixed interest and the amount is determined in the beginning of transaction, whereas the debtor is still not sure that he will get advantage, does not get anything or getting loss.<sup>91</sup> The prohibition of usury in Islam has stated clearly and agreed by many Moslem Scholars.

Associated with the definition of usury described above, then in the credit card itself the element of usury is found in the implementation of credit card usage. On credit cards there is a trading agreement and *kafalah* contract, where the debtor makes transactions such as shopping at the store with indirect payment of cash, but using a credit card. On its use, the total buyer's purchases by the merchant will be billed to the issuer (bank) as the guarantor. In this regard, it means that the buyer or cardholder owes the bank his or her billing expense, and in this case the bank and the merchant will take advantage of the additional price of the transaction value. As a result, the price value of goods in the purchase of credit is more expensive than the cash price, although the payment can be paid in installments up to the period specified in the agreement. In connection with this, on the process of debt repayment, where not a few of the cardholders experienced delays in bill payments, so held the delay of payment. The longer the debt is not paid, the greater the interest charged to the cardholder. As

a result, cardholders are burdened with high credit interest and bills on the use of an ever-increasing amount of funds. If not immediately paid off, then the bill will swell, either due to the use of the funds itself and the burden of interest continues to grow. This of course causes difficulties for the debtors. The addition of interest as described is called as usury, which is categorized as *nasi'ah* usury.

Based on the explanation as described above, to overcome the use of credit card based on usury, the Syariah Bank issued a Syariah Credit Card. The launch of Syariah credit card is based on the Fatwa of the the National Syariah Council Decision (Fatwa Majelis Ulama Indonesia) No. 54 / DSN-MUI / 2006 on Syariah Card, which was then followed up by the government through The Acts Number 21 Year 2008 on Syariah Banking, in Article 19 paragraph (1) letter a which states:

*"Conducting business of debit card and / or financing card based on Syariah Principles."*

The Syariah Credit Card is a bailout card facility used by the cardholder (*hamil al-bithaqah*) as a means of paying or withdrawing cash at certain places which must be paid in full to the bidder (*mushdir al-bithaqah*)<sup>92</sup> at the agreed time. Another definition is also put forward by the National Syariah Council (Majelis Ulama Indonesia) which states that the Syariah Credit Card is a card that functions like Credit Card which is legal relationship (based on existing system) between the parties based on Syariah principles as stipulated in this fatwa.<sup>93</sup> This definition implies that the use of Syariah credit cards should be based on Syariah principles

With regard to the understanding of Syariah principles, the principles of Syariah is the principle of Islamic law in banking activities based on fatwa issued by institutions that have authority in the establishment of fatwa in the field of Syariah.<sup>94</sup> Syariah principles are also defined as a rule of agreement based on Islamic law between banks and other parties to deposit financing funds for business activities or other activities declared in accordance with Syariah, such as financing based on the principle of profit sharing (*mudharabah*), financing by the principle of capital participation (*musyarakah*) sale and purchase of goods by

<sup>88</sup>Burhanuddin. *The Syariah Banking in Indonesia*. (Yogyakarta: UII Press, 2008), p. 64. (hereinafter referred to Burhanuddin III)

<sup>89</sup>Islamic Story Magazine. *alKisah, Economic Terms* No. 06, 23 Mar-5 Apr 2009, p. 42.

<sup>90</sup>Sayyid Sabiq. *Fiqih Sunnah*, Translated by Abdurrahman dan Masrukhin. (Jakarta: Cakrawala Publishing, 2009), p. 227.

<sup>91</sup>Adiwarman A. Karim, *Op. cit*, p. 37-38.

<sup>92</sup>Ulul Azmi Mustofa. *Syariah Card Al-Maqasid Syariah Perspective*. Islamic Economy Scientific Journal Vol. 01, No. 01, Maret 2015, p. 19.

<sup>93</sup>Look at Article 1 point 12 in the Acts Number 21 Year 2008 on Syariah Banking

<sup>94</sup>Look at Article 1 point 12 in the Acts Number 21 Year 2008 on Syariah Banking

obtaining profit (*murabahah*), financing of capital goods based on the principle of pure lease without choice (*ijarah*), or the choice of transfer of ownership or goods leased from the bank by another party (*ijarah wa iqtima*).<sup>95</sup>

In connection with the *Islamic credit card* term, academicians and practitioners use several terms such as Islamic Credit Card, Credit Card based on Syaria'h Principles and Syaria'h Card,<sup>96</sup> and Financing Card Based on Syaria'h Principle which can be found in Abdul Ghofur Anshori.<sup>97</sup> In fact, the demand for a "credit" is the issue that is still being disputed. It is important to recognize that credit is important to be derived in the first place because in Islam there is *al ismu yadullu alal haqo'iq* norm, that the term is indicating the meaning of something. The word *credits* are assumed to be a part of loan, and it is very difficult to keep the loan from the interest.<sup>98</sup> Based on that, according to the writer, the exact term in the naming of Syaria'h credit card is the Financing Card. This is in line with the Acts Number 21 Year 2008 on the Syaria'h Banking, which uses the term of the financing card as the credit term.<sup>99</sup>

#### IV. CONCLUSION

Based on the analysis that has been done then it can be argued that the legal implications in financing cards based on *murabahah* contract can be reviewed from the relevancy to the theory of usefulness (*utility*). In this context it can be understood that credit cards as a modern means of payment, provide many conveniences and benefits in the midst of the rapid development of the business world. In addition, to address the use of credit cards based on usury, the Syaria'h Bank issued a Syaria'h Credit Card or Financing Card, this product must be based on the National Syaria'h Council Decision (Fatwa Majelis Ulama Indonesia) No.54 / DSN-MUI / 2006 on Syaria'h Card. Furthermore, to avoid legal implications that are not in accordance with syaria'h principles, from the aspect of the term that is used in Syaria'h, it is more appropriate to use the *financing card* term instead of *credit card*.

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<sup>95</sup> Zainuddin Ali (I). *Op. Cit.*, p. 3.

<sup>96</sup> Hengki Firmanda. *Op. Cit.*, p. 258.

<sup>97</sup> Abdul Ghofur Anshori. *Op. Cit.* p. 20.

<sup>98</sup> Arif Pujiyono. *Op. Cit.* p. 74.

<sup>99</sup> Look at Article 19 point h in the Acts Number 21 Year 2008 on Syaria'h Banking

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